IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.863 OF 2004

Sane Guruji Shikshan Sanstha
Kurundwad ..Petitioners

Vs.

Shri.Shikshan Prasarak Mandal ..Respondent

....

Mr.M.V.Limaye for Petitioners
Mr.G.H.Keluskar for Respondent

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CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 7,2005

P.C.:

1. Heard Mr.Limaye, the learned counsel for the petitioners-plaintiffs.

2. Being aggrieved by the order dated 22.8.2000 passed by the learned C.J.J.D. at Kurundwad below Exh.26 in R.C.S.No. 80 of 1993 this petition has been filed under Article 227 of the Constitution of India. An application Exh.26 came to be filed by the plaintiffs on or about 2.9.1997 praying for addition of para 3(A) in the plaint. It was contended in terms of the said amendment that after the suit was presented the defendant had proceeded to construct permanent structure and 3/4th of the western side was used for permanent construction and therefore, the

scope of the suit was sought to be enlarged to the said added construction. The defendant filed reply and pointed out that in the written statement presented before the trial Court on 25.10.1992 it was pointed out in para 10 itself that the defendants had carried out the construction to the extent of 884 Sq.Ft. on the western side and inspite of these averments specifically made, the application for amendment under order VI Rule 17 of C.P.C. was brought almost after four years before the trial Court. The suit was initially for injunction simplicitor and from the filing of the written statement at Exh.19 no steps were taken for amending the plaint. The trial Court noted that the amendment ought to have been done within three years.

3. The view taken by the trial Court cannot be faulted with and the suit moved by the plaintiffs is pending for about 12 years by now, no interference is called for in the impugned order in this petition in the facts and circumstances of this case.

4. Hence, the petition is rejected summarily. Ad-interim order if any, stands vacated.

[B.H.MARLAPALLE,J.]